

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:
Claim of Jaime Hauad

TIRC Claim No. 2011.025-H
(Relates to Cook County Circuit
Court Case No. 97-CR-16984)

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Admin. Code 3500.385(b), the Commission concludes that, by a preponderance of the evidence, there is sufficient evidence of torture to merit judicial review. The Commission refers this claim to the Chief Judge of the Circuit Court of Cook County and requests assignment to a trial judge for consideration. See 775 ILCS 40/50. This decision is based upon the Factual Summary and Conclusions set forth below, and the supporting record attached.

Executive Summary

Jaime Hauad was convicted of a 1997 shooting that killed Jason Goral and Jose Morales and wounded Miguel Salgado. Prior to Hauad's trial, his attorney filed a suppression motion alleging Hauad was slapped, hit and handcuffed tightly to induce incriminating statements. At the motion to suppress, Hauad testified to that motion, but mentioned nothing about detectives putting his shoes in a paper cutter and threatening to cut his toes if he didn't confess. He did claim to have immediately asked for an attorney upon arrest and to have made short statements to detectives only because of the alleged coercion.

Hauad did not give a full confession, but rather short statements giving false alibis to his whereabouts at the time of the crime. At least one of those false alibis was used as evidence of consciousness of guilt, to discredit him at trial and obtain his conviction.

Photographs of two lineups of suspects in the case, taken hours apart, show Hauad's shoes intact in the first photograph, but with the toes missing in the second photograph. Hauad told TIRC that police held his feet down in a paper cutter and lowered it onto his shoes, cutting them and threatening to cut his toes if he did not talk. Hauad claims he switched shoes with a friend in the second lineup in order to smuggle them out to his mother as proof of his abuse.

Although Hauad's attorney told TIRC he does not remember discussion of the shoes or the cutting with his client, Hauad's court records demonstrate that Hauad did tell his attorney, prior to trial, something about the condition of his shoes. On a supplemental answer to discovery document, that attorney listed "defendant's shoe" as tangible evidence he potentially planned to introduce at trial. TIRC did not see this reference the first time it reviewed this case¹, and apparently, neither have defendants' attorneys or the state for the past 18 years. It does demonstrate, however, that Hauad raised the issue with his attorney, as he claims, prior to trial. The same document also lists as a potential witness the friend in the lineup with whom Hauad

¹ See "Procedural History" section, *infra*.

switched shoes. A State's Attorney investigator interview of that friend eight days before trial revealed the friend had no information about the murders themselves, only the lineup – strongly implying that Hauad's lawyer considered calling him to testify about the condition and the switching of shoes.

Hauad is not consistent in certain allegations or explanations of events, and he lacks credibility in many areas. Additionally, an alternate explanation besides police torture has been suggested by the state to explain the cutting of the shoes, and this theory is explored below.

But, due to the irrefutable photographic evidence in this case, some evidence suggesting Hauad's innocence, a credibility problem with two of the investigating detectives, and the documentation that Hauad did, in fact raise the shoe issue with his attorney before trial, the Commission finds sufficient credible evidence of torture to merit sending this case to court for a hearing.

Procedural History

The Commission initially voted on May 15, 2013, to refer this claim to the Circuit Court, and filed the referral with the Court on May 20, 2013 (*See Exhibit A*). On September 25, 2017, the Commission voted to rescind the referral in order to perform proper crime victim notification in the case.²

On June 18, 2014, after performing the crime victim notification and after re-examination of the claim and jurisdictional issues under a new administration, the Commission voted to dismiss the claim for lack of jurisdiction because the claim was not related to former Chicago Police Commander Jon Burge – a requirement of the statute at that time.^{3 4 5} At that time, however, the Commission exercised its power under 775 ILCS 40/45 to refer the matter to the State's Attorney of Cook County for its consideration of whether Mr. Hauad's statement to police should be suppressed.⁶

In July of 2016, the Illinois General Assembly and Governor Bruce Rauner amended the TIRC Act through the passage of Public Act 99-688, which removed reference to Burge and put within TIRC's jurisdiction "allegations of torture occurring within a county of more than 3,000,000 inhabitants."⁷ In light of this amendment, the Commission in 2017 passed rules automatically reinstating with TIRC those claims that had been dismissed by the Commission or the Courts solely because of the lack of Burge's involvement.⁸ On March 24, 2017, TIRC

² *Hear 2013.5.15 Closed session proceedings.m4a*.

³ *See 775 ILCS 40/5(1) (2013)*, defining torture as "torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge."

⁴ *See In re: Claim of Jaime Hauad, Order Concerning Jurisdiction* (June 18, 2014) and *Commissioner's Dissent* (July 28, 2014) (*Exhibit B*).

⁵ In March of 2016, the Illinois Appellate Court confirmed the view that TIRC had no jurisdiction over cases unrelated to Burge. *See People v. Allen*, 2016 IL App (1st) 142125, ¶¶13-17.

⁶ *See In re: Claim of Jaime Hauad, Amended Case Disposition* (June 18, 2014) (*Exhibit C*).

⁷ *See P.A. 99-0688*, signed into law July 29, 2016.

⁸ *See 2 Ill. Admin. 3500.330 (b)*, effective March 17, 2017. Also in light of the statutory amendment, The Illinois

informed Hauad's counsel that his claim had been reinstated before the Commission.

Factual Findings

I. The Crime

- 1) On May 22, 1997 at approximately 1 a.m., police were called to 3151 W. George Street in Chicago to investigate a shooting. Police reports indicated three young men (Jose Morales, 25; Jason Goral, 21; and Miguel Salgado, 24) were each shot after they left the Whoops Sports Bar, 2853 N. Kedzie. Morales died at the scene and Goral died days later at a hospital. Salgado, shot in the shoulder blade, survived.⁹ Forensic examination showed gunpowder marks on Morales's wound, suggesting the gun was approximately 6-12 inches from his head when fired.¹⁰ Police identified all three shooting victims as members of the Maniac Latin Disciples. Early theories for the motive of the crime were that the shootings were either a revenge shooting by the Latin Kings against Goral, who had recently been found not guilty of the murder of a Latin King, or were the result of infighting among various factions of the Maniac Latin Disciples.¹¹

II. The Police Investigation

- 2) According to police, a resident who lived near the crime scene reported seeing a young man with close-cropped hair riding a bicycle just prior to the shooting. Another neighbor, Luz Contreras, reported seeing a man in jean shorts and a white T-shirt (and having tattoos on his right arm and close-cropped black hair) standing over the victims with a gun after the shooting. Contreras was, the same day, shown books with gang members' photographs, but could not identify anyone from those books.¹²
- 3) Salgado, who ran to a convenience store after being shot, told the store owner and responding beat officers that three or four men dressed all in black had gotten out of a small maroon vehicle, possibly a van, and began shooting. A short time later, Salgado told detectives a different story - that he had not seen his shooter at all.¹³
- 4) At 3:20 a.m., Jaime Hauad was arrested about 2.5 miles away at 1210 N. Washtenaw in an unrelated matter when the car he was driving was stopped for traffic violations. CPD officers Butzen and Tentler discovered he had an outstanding warrant and took him into

Supreme Court and Illinois Appellate Court vacated previous decisions dismissing a non-Burge, TIRC-referred claim from post-Commission proceedings because it had no demonstrable nexus to Burge. *See People v. Allen, No. 120777-Supervisory Order*, Illinois Supreme Court (Sept. 28, 2016); *see also People v. Allen*, 2016 IL App (1st) 142125-UB (Nov. 23, 2016).

⁹ See Exhibit D, May 22, 1997 CPD Detective Division Supplemental Report, Det. Joseph M. Mohan reporting.

¹⁰ See testimony of Dr. Matthew Areford, Assistant Medical Examiner, March 9, 1999, 143-144.

¹¹ See Exhibit D, May 22, 1997 CPD Detective Division Supplemental Report, Det. Joseph M. Mohan reporting.

¹² See Exhibit D, May 22, 1997 CPD Detective Division Supplemental Report, Det. Joseph M. Mohan reporting.

¹³ *Id.*; *see also* Exhibit E, May 22, 1997 Handwritten CPD Supplementary Report, May 22, 1997, Ofc. S. (unintelligible) Star 7963 reporting.

custody.¹⁴ David Ruiz (aka “Baby Bum”), the car’s other occupant, was apparently released without charges.¹⁵

- 5) Within 14 hours of the shooting, Gang Crimes Specialist Officer Joseph Miedzianowski “had developed information from an anonymous street source that a Latin Disciple by the nickname of ‘Red’ fit the description of the offender,” police reports stated.¹⁶
- 6) Later on the 22nd, Detectives Daniel Engel and Hector Vergara were assigned to the case and interviewed Jose Rios, aka “Red,” at 9:30 p.m. and “determined he was not a suspect,” Engel wrote.¹⁷ The report did not say how Engel and Vergara established that, but a separate report records Rios giving police an alibi contending he left Whoops as little as a half hour before the shooting in order to drive downstate to pick up a friend being released from prison.¹⁸
- 7) On the 24th, Engel and Vergara, who spoke Spanish, returned to the home of Contreras (a native Spanish speaker) with two gang photograph books and five loose Polaroid pictures. According to police reports, she identified one of the Polaroids, an image of Hauad, as being a photo of the man with the gun, police reports state.¹⁹
- 8) On May 26, 1997, Tactical Officers Echeverria and Mosquerria saw Hauad “on the street” and brought him into Area 5 Detective Headquarters for questioning. The officers reported that, unprompted, Hauad announced, “My heart is clear, I was in the County [jail] when that shit happened.”²⁰
- 9) On May 27, 1997 at about 10:45 a.m., witness Luz Contreras identified Hauad from a lineup as the man she had seen standing over the victims with a gun, police said. In the lineup photo taken by Det. Daniel Engel, Hauad appears wearing a pair of Fila gymshoes with white laces and the Fila logo visible on the tips of the shoes. A distinctive extra black lace appears in the right shoe.²¹ Hauad’s arrest report indicates he was formally arrested at 11 a.m. on May 27, 2017.²²
- 10) Police reported interviewing Hauad around 11 a.m. on May 27, 1997 for approximately an hour after advising him of his rights. Hauad allegedly told police he was in county jail at the time of the shooting.²³ After interviewing Hauad, detectives conferred with

¹⁴ See Exhibit F, May 22, 1997 arrest report, Ofc. Butzen reporting. CB 10525515.

¹⁵ See Exhibit G, May 28, 1997 Statement of David Ruiz.

¹⁶ See Exhibit H, May 22, 1997 CPD Detective Division Supplemental 2-page Report, Det. Joseph M. Mohan reporting.

¹⁷ See Exhibit I, May 24, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting.

¹⁸ See Exhibit J Undated, unsigned handwritten General Progress Report with notes of Rios interview.

¹⁹ See Exhibit K, May 24, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting.

²⁰ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting.

²¹ *Id.*; See also Exhibit M, May 27, 1997 Crime Scene Processing Report (photo lineup report and photos), Det. Engel reporting.

²² See Exhibit O, May 27, 1997, Jaime Hauad Arrest Report, Officer Cesar Echeverria reporting.

²³ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting; see also Engel testimony at Motion to Suppress, 5.

officers Butzen and Tentler and county jail officials, confirming Hauad was not arrested or jailed until a few hours after the shooting. The officers also informed Detective Engel that they had seen Hauad at the crime scene approximately 45 minutes after the shooting.²⁴

- 11) Assistant State's Attorney Lorraine J. Scaduto arrived at the police station, and she, Engel and Vergara left the station to interview a witness at his or her home around 12:45-1:00 p.m., according to Engel.²⁵ They returned around 3:30 p.m., bringing Hauad food, Engel testified.²⁶
- 12) That same afternoon, Scaduto and the detectives interviewed Hauad and confronted him with his arrest timeline, which conflicted with his alibi of being in jail. At trial, Engel put the time of this interview at 1 p.m.; at the motion to suppress, he testified this interview took place around 4 p.m.²⁷ Detectives also informed Hauad that a "private citizen" saw him at the crime scene and identified him in a lineup. A few minutes after the 40-minute interview ended, Engel contends, Hauad summoned him back to the interview room to ask who the "senior citizen"²⁸ was who identified him and said she saw him bend down and shoot one of the victims in the head. Engel notes in his report that he never told Hauad where the victims' wounds were. Scaduto requested further investigation by officers before leaving the police station.²⁹
- 13) On May 28, 1997, at approximately 2:55 a.m., shooting survivor Miguel Salgado viewed a lineup with Jaime Hauad and identified Hauad as someone who was in Whoops bar before the shooting. He again maintained he did not see who shot him and explained his earlier discrepancies as resulting from shock and intoxication.³⁰ In the photograph of the lineup, Hauad now appears in an entirely different pair of gym shoes, and his gym shoes are on another lineup participant, Javier DeJesus, with the toes cut off and DeJesus' white socks protruding from the front.³¹
- 14) At 3 a.m. on May 28, Assistant State's Attorney Karen E. Hodge arrived and, after consulting with detectives, interviewed Hauad with Engel present. Hauad mentioned he had an attorney, but Engel and Hodge maintained Hauad said he did not want to talk to his attorney, but wanted to talk to Hodge.³² At that point, Hodge asked Engel to leave, and he did, police reported. Hauad now changed his alibi and said he had been home with his mother the morning of the shooting until 1 a.m. and then David Ruiz, (aka "Baby

²⁴ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting.

²⁵ See Engel Motion to Suppress testimony, 9-10.

²⁶ See Engel Motion to Suppress testimony, 10.

²⁷ See Engel Motion to Suppress testimony, 9; see also Engel Trial Testimony, 67. Given that Scaduto reported they left the station and didn't return until 3:30 p.m., the 4 p.m. time seems more likely.

²⁸ The witness, Luz Contreras, was 40 at the time of the crime.

²⁹ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting.

³⁰ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel Reporting.

³¹ See Exhibit N, May 28, 1997 Crime Scene Processing Report (photo lineup report and photos), Det. Engel reporting.

³² See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel reporting.

Bum”) picked him up and they drove around until being pulled over and Hauad was arrested around 3:30 a.m. Hauad maintained police were lying about seeing him at the crime scene after the shooting. He also maintained that he had initially said he was in jail at the time of the shooting because police gave him the wrong date. Hauad then asked for his attorney and Hodge ended the interview.³³ Police reports do not indicate Hodge ever left the interview room with Hauad, but Hodge testified the interview was actually three separate interviews taking place in two different interview rooms. The first was for 40 minutes around 5:30 a.m., the second was for 30 minutes around 10 a.m. and the third was around 30 minutes at 2 p.m.³⁴

- 15) Gang Crimes Specialists Miedzianowski, Vukovich and Galligan reported they went to the home of Hauad’s mother, Anabel Perez, at 11:45 a.m. on May 28 to attempt to interview her regarding Hauad’s alibi. They reported she declined to speak with them.³⁵
- 16) At 2:20 p.m. on May 28, Miedzianowski, Vukovich and Galligan picked up David “Baby Bum” Ruiz and brought him to Area 5, where he gave a handwritten statement to ASA Hodge, contradicting Hauad’s alibi.³⁶ Ruiz’s statement says he did not pick up Hauad until 3 a.m. and did so on the street on Rockwell, not at Hauad’s house. The statement is dated May 28, 1997, but bears no time indicating when it was taken. It indicates it was taken by ASA Hodge and Gang Crimes Specialist Vukovich.³⁷
- 17) Hauad was then charged with the shootings, and an indictment followed June 24, 1997.

III. Pre-Trial and Trial Proceedings

- 18) Hauad’s attorney, Richard R. Mottweiler, filed a motion to suppress any statements Hauad had made. The motion alleged that arresting officers Echeverria and Mosquera questioned him without reading him his rights. It further alleged Echevarria threatened him and noted he had been trying to get Hauad for a long time. Hauad alleged he requested an attorney and a phone call. After the lineup identification by Luz Contreras, he was repeatedly questioned by Engel and Vergara and 4-5 other officers. Engel did not read him his rights and screamed at him. He was questioned 8-10 times over several hours and a white-haired officer grabbed him by the neck and pushed him against the wall. Det. Engel slapped him about six times. He was cuffed to the wall in tight handcuffs for at least part of the time. An officer described as large, heavy and Hispanic hit him in his chest. Hauad further alleged he was not given food or water and made a brief statement during this time. During ASA Scaduto’s interview, she left the room several times, during which officers threatened him to get him to talk to her, and he made a brief exculpatory statement to her. Engel and another officer gave him papers to sign, which he refused to do. He was yelled at again, and he made another brief statement. ASA Hodge

³³ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel reporting

³⁴ See Hodge Motion to Suppress Testimony, 42-45, 48, 56-60.

³⁵ See Exhibit P, May 28, 1997, General Progress Report, GCSP Vukovich reporting.

³⁶ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel reporting

³⁷ See Exhibit G, May 28, 1997, Statement of David Ruiz.

then interviewed him, and he made an additional brief exculpatory statement. He had not been allowed to eat, drink or sleep during this period, the motion alleges.³⁸ The motion made no mention of his shoes.

19) Hauad's Motion to Suppress Hearing was held over at least two days in late 1998. On December 7, 1998, Hauad testified that:

- He was arrested around 6 p.m. on May 26, 1997 by Officers Echevarria and Mosquera, asked for an attorney, but made no statements to them.
- In his first interview session with Engel, Engel and other officers questioned him at Area 5, and Engel slapped him several times while he was handcuffed. A white haired officer grabbed him by the neck and pushed him against the wall. Engel was yelling at him, trying to get him to confess to the murders. He complained his handcuffs were too tight, but officers ignored his requests to loosen them as well as his request for his attorney. He made a brief statement to the officers.
- After this, ASA Scaduto interviewed him, but came in and out of the interview room several times, and detectives continued to yell at him and tell him to 'come clean' when she was absent. He was tired and hadn't eaten; neither detectives nor Scaduto read him his rights. He talked with Scaduto and officers "[b]ecause they was becoming hostile screaming in my face. The cuffs were tight. I was hungry. I was tired. I ain't ate."
- After Scaduto left, Engel and others tried to get him to sign papers, but would not let him read them; he refused.
- Hauad testified he spoke to his mother, giving conflicting accounts of whether it was before or after he spoke with Hodge.
- At Cook County Jail, he did not tell an intake paramedic that he had any injuries or had been struck by police.
- Hauad gave no testimony in regards to the shoes, nor was the issue addressed at the hearing.

20) At the suppression hearing, Detective Engel denied mistreating Hauad.

21) ASA Lorraine Scaduto testified to three conversations with Hauad on the afternoon of the 27th at Area Five. She testified he did not complain about his treatment or ask for a lawyer.

22) Former ASA Karen Hodge testified to three conversations she had with Hauad on the 28th. She testified he mentioned his mother had retained a lawyer, but that Hauad said he nonetheless wanted to speak with Hodge. He made no complaints about his treatment. During the third conversation, Hauad asked for a lawyer, so she ended their conversation. When questioned about how Hauad knew his mother had contacted an attorney, ASA Hodge testified:

³⁸ See Exhibit Q, *People v. Hauad*, Motion to Suppress Statement.

His mother came down, and **I think she brought him some shoes, if I am not mistaken.** She brought him something. *** She came down.
*** He said he saw his mother and she brought him something.³⁹

- 23) The motion to suppress was denied January 22, 1999.
- 24) An unstamped copy of Hauad's "Amended Answer to Discovery" was filed on an unknown date, but bears a fax machine datestamp of February 17, 1999. The filing lists Javier DeJesus as a potential witness and notes that "Defendant will supply the State with all tangible objects the Defense intends to use at trial including photos[,] **defendant[']s shoe** and 911 tape." (Emphasis added.)⁴⁰
- 25) On March 1, 1999, a Cook County State's Attorney's investigator interviewed DeJesus, apparently under the impression DeJesus would be called as an alibi witness. His report recorded the following exchange:
- Q.: When was the last time you spoke to Jaime Hau[a]d?
A.: In the police line up, at the police station
- Q.: Have you spoken with a Defense Attorney about this case?
A.: No, No one has contacted me.
- Q.: Are you going to testify in Court about this case?
A.: No, I don't know anything about this case.
- Q.: What are you going to testify about in Court?
A.: As far [as] I know I don't have to testify, because I don't know anything about this case, I was in the lineup and in the lock up with him, that[']s all.⁴¹
- 26) Hauad went to trial on March 9, 1999. Hauad did not testify at his trial. Luz Contreras again identified him as the man she had seen with a gun outside her window shortly after the shooting. Salgado testified that he saw Hauad in Whoops bar before the shooting.
- 27) Det. Engel testified that he and Det. Vergara had interviewed Luz Contreras on May 24, 1997, bringing with them two "gang books" or photographs of area gang members, as well as five loose photographs. After reviewing the gang books, she then picked out Hauad from the five loose photographs. Also among the five loose photographs was a picture of Jose "Red" Rios.⁴² He testified Rios' photo was included "because he had been named as a possible – with possible involvement in this case. I wanted to include him in there to either eliminate him or include him if he was identified, include him."⁴³ Engel

³⁹ See ASA Hodge testimony at Motion to Suppress, 58 (emphasis added).

⁴⁰ See Exhibit R, Hauad Amended Answer to Discovery.

⁴¹ See Exhibit S, CCSAO, Investigations Bureau Investigative Report of Javier DeJesus interview.

⁴² See Engel trial testimony, 30-83

⁴³ See Engel trial testimony, 80.

also testified that Hauad had told him that Hauad had been in custody at the time of the shootings, and that Hauad maintained he had not even been aware a shooting took place at that time and location.⁴⁴ Engel and Salgado also testified that Salgado was shown photographs of suspects before the live line up occurred, and that the photo array was not noted in any reports.⁴⁵

- 28) Assistant State's Attorney Lorraine Scaduto testified that Hauad had told her that he was in custody at the time of the shootings. She testified that when she saw Hauad, he was not handcuffed.
- 29) In his closing arguments, Assistant State's attorney Michael Nolan pointed to Hauad's statement to police and ASA Scaduto that he was locked up at the time of the shootings as evidence of his guilt. ASA Shlifka reiterated the false statements on rebuttal.⁴⁶
- 30) In his closing arguments to the jury, Hauad's attorney Richard Mottweiler implied that Det. Engel had Hauad in mind as a suspect when he brought photographs to Luz Contreras, stating Engel "obviously thinks enough of wanting to have Mr. Hauad as a suspect to bring along his photographs specifically."⁴⁷
- 31) On March 11, 1999, a jury found Hauad guilty of the murders of Jason Goral and Jose Morales, as well as the shooting of Miguel Salgado.

IV. Post-Conviction Proceedings

- 32) Hauad's attorney, Mottweiler, argued in his motion for a new trial that the Court had improperly admitted Hauad's exculpatory statements and improperly denied his motion to suppress statements.⁴⁸
- 33) Hauad was represented on direct appeal by another attorney, Michael Benz. He did not address the suppression issues raised in the motion for a new trial. Rather, the brief addresses arguments that Hauad's gang affiliation should not have been admitted into evidence, and that Mottweiler's motion for a directed verdict should not have been denied.⁴⁹ The appellate court upheld the verdict, noting that even if introducing gang affiliations was error, a new trial was not called due to other evidence, including Hauad's denials of being at the crime scene.
- 34) On April 18, 2001, Hauad filed a *pro se* Petition for Post-Conviction relief, arguing Luz Contreras was not credible, insufficient evidence to convict, ineffective assistance of trial counsel and actual innocence. Although he did not raise the coercion issue directly, he

⁴⁴ See Engel trial testimony, 41.

⁴⁵ See Salgado Trial Testimony, 82; See also Engel trial testimony, 70-72.

⁴⁶ See closing arguments of Michael Nolan, March 11, 1999, 24-26; see also Rebuttal arguments of Mark Shlifka, 79, 82, 84-85.

⁴⁷ See closing arguments of Richard Mottweiler, March 11, 1999, 58.

⁴⁸ See Exhibit T, Motion for Judgment of Acquittal/New Trial, April 21, 1999.

⁴⁹ See *People v. Hauad*, Appellate Opinion 1-99-2817, Sept. 22, 2000; see also Hauad's brief, 2000 WL 34334439.

cited the “cesspool of police corruption which exist at Area 5 Violent Crimes,” and referenced the indictment of Miedzianowski.⁵⁰ The Petition was dismissed in a six-page opinion by the trial judge on May 25, 2001, and dismissal was affirmed by the Appellate Court on June 7, 2002.

- 35) On July 25, 2002, Hauad filed a petition for executive clemency alleging actual innocence. He did not raise the coercion issue.⁵¹ A November 21, 2002 affidavit by Hauad maintains that he was not in Whoops before the shooting, but concedes he was at the crime scene with his cousin after the shooting to see if friends had been injured.⁵² His cousin, Hector Perez, submitted a similar affidavit attesting to Hauad’s presence at the crime scene after the shooting.⁵³
- 36) On September 29, 2003, Hauad filed a petition for a writ of habeas corpus in federal court. The petition specifically cited trial counsel’s failure to call Javier DeJesus, who “would have testified to his conversation with petitioner while they were at the police station as well as providing testimony about petitioner’s gymshoes.”⁵⁴ The filing included an October 8, 2002 affidavit from Javier DeJesus swearing that Hauad had switched shoes with him in the lineup at Area 5 and instructed DeJesus to advise Hauad’s mother that the police had cut the shoes and threatened to cut off his toes if he did not cooperate and tell. DeJesus did so, the affidavit stated.⁵⁵ The petition was dismissed without prejudice to allow Hauad to pursue some of his allegations in state court.
- 37) On January 24, 2005, Hauad sought to file another post-conviction petition for relief, this time raising the comments Hauad allegedly made to DeJesus about the gym shoes.⁵⁶ The trial court denied leave to file a successive petition for post-conviction relief on April 1, 2005. The appellate court affirmed this decision on September 21, 2006.
- 38) On August 17, 2006, Hauad again sought to file a PC petition raising arguments around a jury instruction. The trial court denied Hauad leave to file on October 28, 2006. The decision was affirmed on March 22, 2007.
- 39) Hauad, represented by counsel, again sought post-conviction relief, which was denied by the trial court on January 6, 2015. Hauad’s counsel raised the gym shoe issue in its filing. Hauad also filed an affidavit from David Ruiz, the fellow gang member with whom he was riding on the night of the murders, and whose statement to police broke Hauad’s alibi that he was with his mother at the time of the shootings. The affidavit contends that Miedzianowski picked him up on May 28, 1997 and instructed him to give a statement putting Jaime in his car the night of the murders, or Ruiz would become a suspect in the

⁵⁰ See Exhibit U, Petition for Post-Conviction Relief.

⁵¹ See 2002.7.25. Executive Clemency Application.

⁵² See Exhibit V, Affidavit of Jaime Hauad, Nov. 21, 2002.

⁵³ See Exhibit W, Affidavit of Hector Perez, October 9, 2002.

⁵⁴ See Exhibit X, Sept. 29, 2003 Habeas Petition.

⁵⁵ See Exhibit Y, Javier DeJesus affidavit, Oct. 8, 2002.

⁵⁶ See Exhibit Z, January 24, 2005 Hauad PC Petition.

murders.⁵⁷ Police reports corroborate that Miedzianowski was the officer who picked up Ruiz the night he gave his written statement breaking Hauad's alibi.⁵⁸

- 40) The Illinois Appellate Court upheld that dismissal on December 29, 2016.⁵⁹ The court noted that the gym shoes issue could not properly be considered new evidence since it was known to Hauad at the time of trial. However, in closing, the court stated "We recognize that we can no longer dismiss as fanciful allegations of police misconduct and, in particular, allegations of the torture of suspects in custody. * * * We encourage the State's Attorney and the Conviction Integrity Unit to heed the recommendation of the Torture Commission to further investigate the case and Hauad's claim that he was tortured while in police custody."

V. Post-Conviction Developments

- 41) In December of 1998, nine months after Hauad was convicted, federal prosecutors indicted Gang Crimes Specialist Joseph Miedzianowski on racketeering charges, alleging, among other things, that Miedzianowski, rather than working to curb Chicago's drug trade, was actively involved in it, helping to sell kilos of cocaine and run interference with law enforcement for his co-conspirator gang members, and would rob and extort rival drug dealers, falsifying affidavits and police reports to serve his purposes.⁶⁰ Among the gangs that Miedzianowski aided were the Maniac Latin Disciples, the same gang at issue in the Hauad conviction.⁶¹ At his trial, federal officials played a taped call of Miedzianowski boasting about torturing a criminal with a hot coat hanger.⁶² Miedzianowski was convicted and sentenced to life in prison.
- 42) On August 2, 2001, federal agents interviewed one David Hernandez who told them, as part of a proffer agreement, that a man named Nick Maroupolous⁶³ shot Goral, Morales and Salgado. Hernandez told authorities he had been in Whoops when Moroupolous entered, showed Hernandez a gun, and then told him he was going to "take care of my business." Hernandez interpreted this to mean that Maroupolous was going to shoot the three and that Hernandez should leave. Hernandez said he left, got in a car with Individual Y, parked at Kedzie and George, and then watched Maroupolous shoot the three.⁶⁴

⁵⁷ See Exhibit AA, David Ruiz affidavits of April 18, 2012 and December 6, 2012.

⁵⁸ See Exhibit L, May 28, 1997 CPD Detective Division Supplementary Report, Det. Engel reporting, 13.

⁵⁹ See *People v. Hauad*, 2016 IL App (1st) 150583 (2016) (modified February 28, 2017).

⁶⁰ See *U.S. v. Miedzianowski et al.*, Sixth Superseding Indictment, Dec. 22, 2000.

⁶¹ See *U.S. v. Miedzianowski*, 2002 WL 737248, *3 (April 25, 2002); see also Lightly, Todd, "Former cop crossed line, destroyed it," *Chicago Tribune*, January 19, 2003, 2003 WLNR 15408196.

⁶² See Lightly, Todd, "Court Hears Account of Cop Boast of Torture," *Chicago Tribune*, Feb. 9, 2001, available at: http://articles.chicagotribune.com/2001-02-09/news/0102090500_1_testify-miedzianowski-co-defendants.

⁶³ Several different spellings of Maroupolous appear throughout the record. We use the spelling found in the computer of the Cook County Circuit Court Clerk records.

⁶⁴ See Exhibit BB: January 17, 2013 letter from Assistant U.S. Attorney Manish Shah to Alison R. Flaum, attorney for Hauad.

VI. Materials submitted by Hauad's Attorneys

- 43) Attorneys for Hauad supplied the Commission with the U.S. Attorney's letter regarding David Hernandez, as well as three letters to Hauad and his mother from Nick Maroupoulos:
- A Feb. 25, 1999 letter to Hauad in which Maroupoulos said he wanted to see Hauad in jail, but had been advised not to, "considering," and that he also could apologize for everything, but it wouldn't help.
 - A Nov. 5, 2000 letter to Hauad's mother suggesting that what happened to Hauad was the worst thing that ever happened to Maroupoulos.
 - A Nov. 6, 2000 letter to Hauad in which Maroupoulos wrote that someone took care of some "nation business" and that Hauad "got caught up for some s--- you didn't even do or know about." It suggests that Hauad was in the wrong place at the wrong time.⁶⁵
- 44) Attorneys for Hauad also supplied the affidavit from David Ruiz from Hauad's PC petition that was dismissed on January 6, 2015. (See Paragraph 39, *supra*), Ruiz affidavits also stated that the same Individual Y who was with Hernandez when he watched Maroupoulos shoot the three, (See Paragraph No. 42, *supra*) later confessed to Ruiz that he was the one who ordered Maroupoulos to perform the shooting.⁶⁶
- 45) Attorneys for Hauad supplied vehicle records⁶⁷ for Maroupoulos showing he owned a Maroon 1988 Toyota Tercel similar to the description of the red car that Salgado once told police he saw his assailants get out of⁶⁸ and that another witness told police he saw speeding away from the crime scene.⁶⁹ The Illinois Appellate Court noted that the records only showed ownership as of 2005, and therefore "does not strongly support the inference that Maro[u]polous owned the red car some witnesses may have seen."⁷⁰

VII. TIRC Investigation

- 46) TIRC interviewed Hauad on June 14, 2012.⁷¹ In his claim form and in his interview, Hauad alleged that:
- a. After the first lineup at Area 5, Detective Engel threatened to cut off his toes if he did not sign a written statement that they presented to him. On four to five occasions, Hauad's feet were placed into an office-grade paper cutter. One officer would hold Hauad's feet while Engel lowered the blade into the tops of Hauad's shoes, making

⁶⁵ See Exhibit CC: Letters from Nick Maroupoulos.

⁶⁶ See Exhibit AA, David Ruiz affidavits of April 18, 2012 and December 6, 2012.

⁶⁷ See Exhibit DD, Maroupoulos car records.

⁶⁸ See *People v. Hauad*, 2016 IL App (1st) 150583 (Dec. 29, 2016), ¶11.

⁶⁹ See Exhibit EE, May 23, 1997 General Progress Report, Det. D. Jacobs reporting (memorializing conversation with witness Jose Cruz. Cruz also reported seeing a white van with a blue stripe also leaving the scene in an addition to a red car).

⁷⁰ See *People v. Hauad*, 2016 IL App (1st) 150583 (Dec. 29, 2016), ¶62.

⁷¹ Hear "Jaime Hauad Interview_06_14-2012.mp3".

gashes in their tops.

- b. Hauad said that in his heart, he didn't believe Engel would cut his toes off.
- c. Before his second lineup, an officer removed his shoes. When Hauad went to the second lineup, he saw the shoes in the hall and put them on. At that point, the front sections of the shoes had been removed entirely.
- d. Hauad switched shoes with Javier DeJesus, a friend and participant in the second lineup, because he knew DeJesus was being held on minor charges and would soon be released.
- e. Hauad maintained he did tell one of the Assistant State's Attorneys about the shoes and that he had been beaten and choked.
- f. Hauad also told Commission staff (incorrectly) that he did not testify at the motion to suppress. He said he did not notice that the claim about the shoes wasn't raised in court because he was routinely high on marijuana at the jail and when he came to court. Because he knew he was innocent and because he had a private lawyer, he did not take his case seriously until he was found guilty.
- g. Although he testified at his motion to suppress that he had made a "brief statement" in response to abuse, Hauad told TIRC staff that the false alibi about being in the lockup at the time of the murder was a statement fabricated by detectives. He pointed to the details of the story (that he allegedly told officers he was arrested while driving to pick up his little brother from kindergarten when he was arrested) as evidence of their manufacture. Hauad maintains he has no little brother that age, that his little brother is only one year younger than him.⁷²

47) TIRC interviewed Hauad's attorney Richard Mottweiler on March 28, 2013. Mottweiler stated that:

- He had no specific recollection of any conversation with Hauad about the shoes;
- His general practice would be to include something like that in a motion to suppress, if mentioned by the client; and
- He thought he had possession of the gym shoes at one time, but it may have been after the trial.⁷³

48) TIRC staff interviewed Det. Engel on September 20, 2017. In most areas, Engel's memory of the case did not extend past what he had documented in his reports and testimony, which TIRC supplied to him and he reviewed before being interviewed. Engel denied mistreating Hauad or seeing anyone mistreat him. He did not know how Hauad's shoes had come to be cut. He did confirm that there was a paper cutter at Area Five at the time of Hauad's arrest in a room that secretaries used down the hall from the interrogation rooms. Engel said he did not see anyone enter Hauad's room except himself, Det. Vergara and the Assistant State's Attorneys who interviewed Hauad. Engel did remember that he obtained the gang books and five loose Polaroid photos that he took to Luz Contreras from Officer(s) Echeverria and Mosquera, and that the five loose

⁷² ASA Scaduto's notes and her testimony indicate Hauad then said it was actually Little Bum's car and Little Bum's brother was in the car. See Exhibit FF, Notes of ASAs Scaduto and Hodge interviews.

⁷³ See Exhibit GG, March 28, 2013 e-mail from David Thomas to counsel memorializing Mottweiler interview. (Earlier, attorney-client privileged e-mails in the chain have been redacted.)

Polaroids were simply local gang members whose photos had not yet been placed in the gang books. Hauad, who had only recently turned 17, was likely not in them yet because he had been a juvenile until only shortly before the crime.⁷⁴ Hauad was not a suspect at the time he took the photographs to Ms. Contreras. Engel said that Miedzianowski and other officers would not have had any reason to talk to someone else's prisoner, and that was not the usual practice of officers.⁷⁵

- 49) After TIRC dismissed Hauad's case for lack of jurisdiction in 2014, pursuant to 775 ILCS 40/45(d), it referred the matter to the Cook County State's Attorney's Conviction Integrity Unit, which reviewed the matter. In October, 2016, that office announced it had not found credible evidence that would "call the conviction into question."⁷⁶ After an administration change at the State's Attorney's Office and a 2016 appellate opinion urging the office to look again, that office announced it was once again reviewing the case. After Public Act 99-688 passed and this Commission instituted administrative rules in accordance with that act, Hauad's claim was reinstated. Commission staff invited both the state and counsel for Hauad to submit any additional documentation they thought relevant. The state declined, noting the new, ongoing review of the case. Hauad's attorneys saw no need for further submissions.⁷⁷
- 50) State's Attorneys did, however, share with TIRC a theory that Hauad's shoes may have been cut by Miedzianowski not in an attempt to elicit a confession, but as a warning from the gang not to disclose who ordered the murders. They noted that David Ruiz and his brothers (the "Bums") were close with Miedzianowski.⁷⁸ TIRC's decision to interview Engel was, in addition to an interview about Hauad's allegations against him, an attempt to confirm or dispel the theory that Miedzianowski had extended access to Hauad at Area 5 during Hauad's confinement and interrogation.

VIII. Pattern and Practice Information

- 51) TIRC obtained the CPD complaint registers (CR's) of detectives Engel and Vergara, examined Westlaw for mentions of the detectives and searched the Northern District of Illinois U.S. District Court docket system for lawsuits against the officers. Engel was the subject of 18 CRs over the course of his career and Vergara was the subject of 10 CRs.⁷⁹

⁷⁴ Hauad's IDOC profile indicates he was born February 12, 1980, meaning he turned 17 years of age three months and 10 days prior to the shooting. Hauad's criminal history sheet, however, had his birthday listed as January 26, 1997, and began listing arrests on his "adult" rap sheet beginning January 26, 1997. His adult rap sheet indicates he was arrested and processed four times prior to the arrest for the murders.

⁷⁵ See Exhibit HH, Daniel Engel Interview Report, Investigator David Hodapp.

⁷⁶ See Duaa Eldeib, "Police torture panel's reach expands beyond Burge era," *Chicago Tribune*, October 7, 2016, 2016 WLNR 30766149.

⁷⁷ TIRC did, nonetheless, request certain specific filings from Hauad's counsel that were made after TIRC last considered the claim.

⁷⁸ The first federal indictment of Miedzianowski also indicted a David Ruiz. See Docket, *People v. Miedzianowski et al.*, U.S. District Court, Northern District of Illinois, 98-CR-923. It could not immediately be determined if this was the same David "Baby Bum" Ruiz who was stopped the night of the murders with Hauad and also gave the written statement breaking Hauad's alibi.

⁷⁹ See Exhibit II, summary exhibit of complaints against Engel and Vergara.

a) Hector Vergara

Vergara's CR history shows one complaint of a threat to elicit a confession. The allegation was raised in a civil lawsuit by John Almodovar whose conviction was reversed due to inadequate counsel, who failed to file a motion to quash arrest for lack of probable cause. After the reversal, the criminal case was dropped. The civil complaint is very general, names eight officers, and does not specify which officers made threats. It was voluntarily withdrawn and the court docket does not indicate that settlement was reached.

Vergara had three complaints of physically abusing suspects during arrests or stops, three complaints of improper searches, one missing property complaint that was withdrawn, and one complaint by an attorney that Vergara lied to her to keep her away from her in-custody client.

i) Sustained False Police Report/Denials to FBI Agents

Vergara and his then-partner Officer Anthony Wojcik were, however, the subject of a sustained OPS complaint (CR 162148) going to the credibility of his reports. That office determined Vergara had filed a false police report in July of 1988. (Wojcik was also listed on the Hauad reports as an investigating detective.) Vergara and Wojcik filed a police report stating they received an anonymous call alerting them to the location of a discarded rifle in a park, which they then retrieved.

In fact, Vergara and Wojcik had met an informant and taken possession of the gun directly from him. When the FBI confronted Vergara about the report at his home, he again maintained he had found the gun at a park, and told the FBI there was no incentive system at the CPD rewarding officers for the seizure of guns. In 1992, CPD Superintendent Matt Rodriguez acknowledged to the Sun-Times the existence of just such a "point system" that scored officers on arrests and seizures, giving some of the highest points for seized guns.⁸⁰

⁸⁰ The lie was discovered because the FBI had been investigating reports of officers arresting suspects on false or exaggerated charges and then extorting the arrestees into providing them with guns for seizure in exchange for not filing charges in the original arrest. The FBI had been contacted by the informant, who claimed Wojcik had planted marijuana on him at an earlier arrest and then demanded a gun. The FBI observed the informant delivering the rifle to Wojcik and Vergara. No charges were ever filed against the informant in the original marijuana matter.

The FBI investigation revealed five other instances in which Vergara had signed reports claiming to have recovered guns or drugs that were reported by an anonymous caller, found randomly or dropped by a suspect being chased. Wojcik had four other such reports.

The FBI reports additionally indicated that a friend of the informant at issue in the 1988 FBI sting reported to the FBI that, after FBI agents interviewed the two officers, he was harassed by various 14th District officers, who mentioned the FBI sting and told the friend to tell the informant he "had something coming."

In addition to Vergara's denial of the existence of a system rewarding gun seizures or punishing the failure to do so,

Confronted with the FBI evidence, Wojcik and Vergara eventually admitted to filing a false police report, and said they had left the informant's name out of the report because they had promised him they would do so in order to build his trust and cultivate him as a source. CPD reprimanded both Vergara and Wojcik.

b) Daniel Engel

Engel (along with Wojcik) faced one CR complaint of abuse of a suspect in custody. Engel also had a CR complaint accusing him of bashing a citizen's face repeatedly into the ground after the two argued about Engel's directing of traffic.

Court opinions show he faced one complaint of falsely claiming a suspect made an incriminating statement⁸¹ and one complaint of participation in an investigation in which the murder suspect alleged Wojcik and his unnamed partner beat him into a confession.⁸²

The remainder of Engel's CR complaints largely concerned propriety of searches or departmental policies. None of the CR complaints were sustained.

- 52) The Commission sent to all three crime victims or their relatives notice of its consideration of this claim on or before Oct. 13, 2017.⁸³ On October 30, 2017, Jason Goral's mother, Debbie DeRienzo contacted TIRC staff to reiterate her opposition to any further review of Hauad's case, and asked that the Commission consider her previous 2013 letter since she could not attend the November 15, 2017, proceedings. The letter is Exhibit JJ. On September 25, 2013, a relative of Jose Morales attended a Commission meeting and urged the Commission not to refer Hauad's claim to court for review.⁸⁴

the FBI in 1991 obtained a statement from a Deputy Chief of Patrol, Ronald C. Garcia, who told the agency "there was at no time a formal 'POINT' system established to document performance of 14th District Tactical Team members. GARCIA advised there may have been an informal system, but it did not exist to his knowledge." The Sun-Times story proving its existence ran one year later in 1992. See Nelson, Deborah, "Point system rewards cops for arrests: Big totals bring promotions," *Chicago Sun-Times*, June 7, 1992, 1992 WLNR 5295362.

⁸¹ The court indicated that, while it did not put much credence in the theory, Chavez was nonetheless entitled to raise it. See *People v. Chavez*, Appellate Opinion 1-01-0758 (April 23, 2003) at 841.

⁸² See *People v. Rosado*, 2013 IL App (1st) 111306-U; The court denied Rosado's post-conviction motion, and the appellate court upheld the decision, finding more credible Wojcik and an assistant state's attorney's testimony. It also noted the specific abuse allegations were late-raised, 14 years after they allegedly occurred. The opinion did note, however, that Rosado alleged on direct appeal ineffective assistance of counsel for failing to file a motion to suppress. The opinion also implied that the trial attorney had failed to try to impeach a co-defendant's testimony at trial.

⁸³ Letters were sent to Juan Moreles' relative Daniel Morales, Jr., to Jason Goral's relative Debbie DeRienzo, and to Miguel Salgado.

⁸⁴ Hear "2013.9.25 Crime Victim relative speaks.m4a".

Standard of Decision

Section 40(d) of the Illinois Torture Inquiry and Relief Act permits the Commission to conduct inquiries into claims of torture. 775 ILCS 40/40(d). “‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some *credible* evidence related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge. 775 ILCS 40/5 (emphasis added). If five or more Commissioners conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. If fewer than five Commissioners conclude by a preponderance of evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review.”⁸⁵

The Commission was not asked by the General Assembly to conduct full, adversarial evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, the Commission has interpreted Section 45(c), through its administrative rules, as not requiring that it be more likely than not that any particular fact occurred, but rather that there is sufficient evidence of torture to merit judicial review.⁸⁶

Analysis

a) Confession Requirement

As a preliminary matter, the Commission addresses whether Hauad’s false exculpatories introduced at his trial adequately allege a “tortured confession” under the TIRC Act. The phrase “Tortured Confession” is not defined in the statute, but by administrative rule.

“Tortured Confession” includes any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person that the convicted person alleges

⁸⁵ See 775 ILCS 40/45(c). To dismiss a claim, a minimum of four votes to dismiss are required. See 2 Ill. Adm. Code 3500.385(e).

⁸⁶ In general, the approach the Commission has taken is akin to the concept of “probable cause;” that is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. The Illinois Appellate Court has noted that “the Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities.” See *People v. Christian*, 2016 IL App (1st) 140030, ¶95. The court compared the Commission to a court deciding whether a postconviction petition can advance to the third stage. *Id.* at ¶99.

Although Section 55(a) of the TIRC Act (775 ILCS 40/55(a)) makes Commission decisions subject to the Administrative Review Law, Commission decisions do not concern “contested cases” as defined in the Illinois Administrative Procedure Act (5 ILCS 100/1-30) because TIRC proceedings do not require an opportunity for a hearing. See 775 ILCS 40/45(a): “The determination as to whether to conduct hearings is solely in the discretion of the Commission.”

were a result of (or, if the convicted person denies making the statements, occurred shortly after) interrogation that the convicted person claims included torture. 20 Ill. Admin. 2000.10, effective September 19, 2014.

Here, Hauad alleged at his motion to suppress hearing that he immediately requested counsel upon arrest and was denied. He claims he was slapped and beaten during his first interrogation session with Engel and other officers in an attempt by them to elicit a confession. Hauad's suppression testimony indicates he gave a brief statement during this first interrogation session, and police also maintain Hauad gave them the false alibi about being in custody during this first interrogation session. In his suppression testimony, he alleged torture resulted in an incriminating statement, which clearly fits the definition.

Hauad's subsequent filings and accounts have shifted as to whether he did or did not make statements to police. However, the state maintains he made such a statement, and Hauad alleged abuse by Engel and other officers occurred before the alleged statement. Because he has alleged abuse occurred before a manufactured statement, this too falls within the definition of confession under the administrative rule. Thus, a tortured confession has been adequately alleged under either account by Hauad⁸⁷, and the Commission now considers the evidence supporting and detracting from Hauad's claim of torture.^{88 89}

b) Factors Supporting Torture Claim

- Photographs taken by the lead detective in the case confirm that Hauad's shoes were

⁸⁷ Some statements, such as the spontaneous statement to arresting officers Echeverria and Mosquera, were alleged to have occurred before any torture occurred, and so would not qualify as a tortured confession – although he did allege they occurred after an attorney was requested, a potential Miranda violation. However, at the suppression hearing, Hauad alleged his brief statements to Engel and state's attorneys occurred after torture commenced, and thus would constitute tortured confessions.

⁸⁸ The courts, too, allow an allegation of a coerced confession to be considered when a defendant has simultaneously or subsequently alleged coercion. "The law is settled that a defendant's assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed." *People v. Wrice*, 2012 IL 111860, ¶53, citing *Ashcraft v. Tennessee*, 322 U.S. 143, 152 n.7 (1944) ("The use in evidence of a defendant's coerced confession cannot be justified on the ground that the defendant has denied he ever gave the confession."). *But see People v. Hobley*, 182 Ill.2d 404 (1998) (rejecting postconviction claim of new evidence of police brutality at Area 2 would have aided defendant where, at trial, he alleged the statements were fabricated. *Wrice* subsequently narrowed *Hobley* significantly, however. *See also People v. Norfleet*, 29 Ill.2d 287, 290, citing *Lee v. Mississippi*, 332 U.S. 742 (1948) (noting the U.S. Supreme Court's reversal of a conviction where a defendant at trial alleged no confession had been made, and then on appeal alleged that it was coerced. The *Lee* court wrote, "A conviction resulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process."

⁸⁹ The regulatory requirement that the false alibi be incriminating is also met. Det. Engel and ASA Scaduto both emphasized it during their testimony, and the prosecutor highlighted it in his closing argument at trial. They would not have done so if it were not incriminating, nor would the state have bothered opposing a suppression motion if they didn't think it incriminating. Case law is also clear that false alibis are incriminating. *See People v. Milka*, 211 Ill.2d 150, 181-182 ("A false exculpatory statement is 'probative of a defendant's consciousness of guilt'" and "can be a factor in establishing guilt beyond a reasonable doubt."

cut while he was in police custody. It is highly unlikely that Hauad or anyone allied with him, such as his mother, could have smuggled in a sharp object capable of doing that (nor does the lockup visitation form indicate anyone visited him at Area 5). The most logical conclusion is that someone with unfettered access to Area 5 police station cut the shoes, and that this person was a police officer.

- The mention of “defendant[']s shoe” on Hauad’s supplemental answer to discovery proves that Hauad told his trial attorney something about his shoe. Further, the addition of Javier DeJesus (who told State’s Attorney’s Investigators that he knew nothing about the murders; only the lineup) to the supplement strongly suggests Mottweiler at least entertained the idea of calling DeJesus to testify about the condition of the shoes and the switch with Hauad.
- While the Pattern and Practice evidence against the lead detectives on the case regarding complaints of abuse to elicit confessions is scant compared to other cases this Commission has seen, the sustained complaint of filing a false police report against one of the lead detectives (Vergara) and one of the contributing detectives (Wojcik) brings their credibility into question. The Commission also finds it highly significant that Vergara continued making false statements to FBI agents who arrived at his home to question him about the false report. While we understand the detectives’ motive for the false police report (to bring a level of anonymity and comfort to an informant), this evidence suggests that at least these two detectives had no problem falsifying police reports to eliminate inconvenient details that did not fit their chosen narrative or suit their purposes.
- There is some evidence that the crime may have been committed by Nick Maroupoulos, although the Commission makes no findings regarding any suspect’s guilt or innocence.
- The evidence against Hauad was not strong, increasing the motivation of police to elicit or create an incriminating statement.
- The identification of Hauad by Salgado as being present at the bar is suspect given Salgado’s wildly inconsistent stories about who shot him. In addition, his story about falling to the ground and not seeing who shot him seems suspect, since he was in close proximity to the other victims, and one of the other victims had evidence of powder marks on his head, meaning he was shot at close range and therefore would have been close by for Salgado to see.
- The involvement of Miedzianowski in the investigation lends some credence to Hauad’s allegation that Miedzianowski was one of the officers who beat him to elicit a confession. Information from Miedzianowski’s prosecution reportedly included descriptions of torture, planting evidence, fixing cases and dealing drugs.⁹⁰

⁹⁰ See Paragraph 41, *supra*.

- The theory that Miedzianowski cut the shoes not as a way to elicit a confession, but as a way to keep Hauad quiet about who ordered the murders is undercut by Detective Engel's statements to TIRC that he never saw Miedzianowski enter Hauad's interrogation room nor would that have been typical practice for Miedzianowski to do.
- We are slightly skeptical of Engel's contention that Hauad was not a suspect when he took Hauad's loose Polaroid over to witness Luz Contreras' house. While it is plausible that the Hauad Polaroid would not be in the gang books because Hauad was a juvenile until shortly before the crime, Rios' picture was also brought as a loose Polaroid. Rios was 21 years old at the time of the murder, and on the stand, Engel admitted he took Rios' photo because Rios was a suspect (conflicting with his statement to TIRC that all the loose Polaroids taken to Contreras were loose simply because they were not yet in the gang books). We find it much more likely that detectives separated out the five Polaroids because they were people they viewed as likely suspects. This prevarication damages Engel's credibility.

c) Factors Detracting from Torture Claim

- The credibility of Hauad's claim of torture concerning the shoes is undercut by his failure to mention it when he testified at his motion to suppress.
- The reliability of his memory is undercut by his statement to TIRC that he did not testify at his suppression hearing.
- It is difficult to credit Hauad's testimony concerning certain details of his interrogation, particularly as against the Assistant State's Attorneys. He maintains he told both Assistant State's Attorneys about his abuse; they denied it. Attorney Hodge wrote in her report that Hauad said officers were lying about spotting him at the crime scene after the shooting. Yet in his 2002 affidavit, Hauad himself admitted he did go to the crime scene after the shooting. In his written motion to suppress and at his suppression hearing, he conceded making "brief statements" to police. Although he did not specify what those statements were, presumably, they were the statements (the false alibis) that he was trying to suppress. Yet in his interview with TIRC and in his most recent affidavit with the court, he said police manufactured the false alibi of being in jail at the time of the murders.
- Hauad alleges that the police fabricated his statement. If the police were going to invent a statement, they would seem to have an incentive to invent a full confession, rather than merely false exculpatory statements.
- Miedzianowski's close association with leadership of the Maniac Latin Disciples, and his documented crimes in furtherance of their interests, makes the theory that the

shoes were cut to keep Hauad quiet about who ordered the hit a distinct possibility.

d) Balance of the Evidence

The theory that Miedzianowski, acting as a corrupt cop doing the bidding of the Maniac Latin Disciples and warning Hauad not to reveal who ordered the hit, is an intriguing one. It might explain why Hauad would not have reported the shoe cutting immediately or raised it during his motion to suppress testimony, believing it to be a message from his gang rather than a threat from the CPD. It could also, if true, muddy the legal question of whether Miedzianowski's actions constitute coercion of a criminal defendant if Miedzianowski's intention was not to get Hauad to talk, but rather, shut up.

Another possibility (which has not been suggested by any of the parties) is that Hauad's shoes were removed to prevent access to shoelaces (as a suicide prevention measure exercised with most detainees) and that officers, to spite him, damaged the shoes when he was not in them.

But at least equally possible is the theory that one of the investigating detectives, trying to induce a confession in a case devoid of forensic evidence tying Hauad to the murders, roughed him up to get a confession. What is clear is that there is irrefutable proof that Hauad did tell his trial attorney about his shoes prior to trial, as documented in Hauad's supplemental answer to discovery. Although this document bears no court stamp, it appears to have been filed with the court (or at least supplied to the prosecution) because the State's Attorney's Office very quickly went out and interviewed DeJesus (first listed as a potential witness on the same document) to see why he might be called as a witness.

It also appears that the most likely reason for putting Javier DeJesus on the witness list was to testify to the shoe exchange and the condition of the shoes. DeJesus freely admitted to the State's Attorney's Office that he knew nothing about the murder case – only the lineup. He also stated, eight days before trial, that Hauad's attorney had not yet contacted him. This lends support to Hauad's allegations that he was inadequately represented at trial, and alibi and other witnesses were not interviewed by his defense team. (It may also be possible that Mottweiler had not noticed the cut shoes in the lineup photographs that provided corroboration of Hauad's story. Mottweiler may have reasonably believed that, without corroboration, mangled shoes in a suspect's mother's possession would more likely be viewed by a jury as fabricated evidence for a tall tale.)

Hauad's supplied evidence of innocence also bears weight, although we again note that we make no findings regarding his guilt or innocence.

All these theories, however, are irrelevant. What matters is evidence, and the standard of decision of this Commission. The standard the legislature set for this Commission does not require proof of torture beyond a reasonable doubt, or even a preponderance of evidence that torture occurred in order to refer a case to court for a new hearing. It requires only that there be sufficient evidence of torture that merits judicial review.

We would also note that the standard courts employ at the motion to suppress stage puts the burden on the state to show that a statement was given voluntarily. We find highly relevant to this case the now-routinized case law that “when it is evident that a defendant has been injured while in police custody, the State must show, by clear and convincing evidence, that the injuries were not inflicted as a means of producing the confession.” Hauad was not injured in police custody, but his shoes were undeniably cut off at the toes while in custody. To date, no police officer, prosecutor, or any state actor has given any sworn testimony explaining how this came to be, or why it should be viewed as an irrelevant fact to be swept under the rug.

We also are unpersuaded by the logic that because Hauad admitted to TIRC that he did not believe detectives would, in fact, cut his toes off, it naturally follows that his statements were not coerced. This ignores the fact that Hauad made additional allegations that he was slapped, hit and painfully handcuffed. It is a short, logical step to believe that an officer who would bluff cutting off someone’s toes (while actually risking doing so by cutting into that person’s shoes with a paper cutter) would also have no reservations about slapping a suspect around to get him to make a statement. It is also a short logical step to believe that a detective who admitted filing a false police report, and then doubled down on those false statements when the FBI showed up at his doorstep to ask about it, would sign a police report that might be, at a minimum, less than the full truth.

Nor do we find important that Hauad’s statements were not a full confession. He testified at his suppression hearing that he wanted to remain silent, that he wanted an attorney, that he made that known, that the questioning continued, and that the only reason he gave brief statements was because of the alleged abuse and coercion. And that questioning, the state admits, resulted in highly incriminating statements of a false alibi which was used to convict him. While torture is highly case-specific, and what may be intimidating to one person may not be intimidating to another, we do not believe that someone’s fortitude and ability to withhold a full confession would validate a slightly less incriminating statement allegedly procured by the same torture. It is not unreasonable to believe that slapping and hitting would make a suspect say something short of a full confession in an effort to end, or at least take a break from, abuse.


The Commission fully recognizes that Jaime Hauad’s story has shifted and he lacks credibility in many respects. We do not pronounce him innocent or guilty, nor do we definitively find he was tortured. But we do find that photographic evidence of cut shoes, the proven existence of a paper cutter at Area 5, and the proven communication by Hauad of the shoe issue to his attorney before trial all constitute sufficient credible evidence of torture meriting a closer look.

Conclusion

The Commission concludes, by a preponderance of the evidence, that there is sufficient evidence of torture to merit judicial review of Jaime Hauad’s claim and it instructs its Executive Director to refer the claim to the Chief Judge of Cook County for further review. This

determination shall be considered a final decision of an administrative agency for purposes of administrative review under the Administrative Review Law (735 ILCS 5/3-101).⁹¹

Dated: November 15, 2017


Cheryl Starks, Chair

⁹¹ See 775 ILCS 40/55(a) of the TIRC Act.

Although this determination does not concern a “contested case” as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (*See* 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.